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Attorney for: Defendant

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,

Plaintiff,

vs.

EMMANUEL HERNANDEZ-GAYOSSO,

Defendant

CASE NO: 08CR0908-W

NOTICE OF MOTION AND  
MOTION FOR DISCOVERY

Date: 6/2/08

Time: 2:00 PM

NOTICE OF MOTION

TO: CAROL C. LAM, UNITED STATES ATTORNEY, AND W. MARK CONOVER,  
ASSISTANT UNITED STATES ATTORNEY.

PLEASE TAKE NOTICE that on the date and at the time and place indicated above,  
or as soon thereafter as counsel may be heard, defendant , by and through his attorney,  
CHARLES H. ADAIR, will present the following:

MOTION FOR DISCOVERY

Comes now, defendant , through his attorney, who moves for an order requiring the  
government to comply with the following discovery requests in the attached Points and  
Authorities in Support of Motion for Discovery.

Authorities, the files and records in the above-entitled case, and any other materials which may  
be brought to this Court's attention prior to or at the time of the hearing on this motion.

Date: 5/14/08

S/CHARLES H. ADAIR  
CHARLES H. ADAIR,  
Attorney for Defendant

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Attorney for Defendant  
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San Diego, CA 92101  
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Attorney for Defendant

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,

Plaintiff,

vs.

EMMANUEL HERNANDEZ-GAYOSSO,

Defendant

CASE NO: 08CR0908-W

POINTS AND AUTHORITIES IN SUPPORT  
OF MOTION FOR DISCOVERY

DATE: 6/2/08

TIME: 2:00 PM

POINTS AND AUTHORITIES

Mr. HERNANDEZ-GAYOSSO, defendant in the above-entitled case, hereby moves for an order requiring the government to comply with the following discovery requests:

(1) Statements. All written and oral statements made by defendant. This request includes, but is not limited to, any rough notes, records, transcripts or other documents and tapes in which statements of defendant are contained. The substance of statements the government intends to introduce are discoverable under Fed. R.Crim. P. 16(a)(1)(A) and Brady v. Maryland.

agents' reports, and tangible evidence favorable to the defendant on the issue of guilt or which affect  
3 the credibility of the government's case. This evidence must be produced pursuant to Brady v.  
4 Maryland and United States v. Agurs, 96 S.Ct. 2392 (1976).

5 (3) Prior record/other act evidence. All evidence, documents, records of judgments and  
6 convictions, photographs and tangible evidence, and information pertaining to any prior arrests and  
7 convictions or prior bad acts. Evidence of prior record is available under Fed. R. Crim. P.  
8 16(a)(1)(B). Evidence of prior record is available under Fed. R. Crim.P. 16(a)(1)(C) and Fed. R.  
9 Evid. 404(b) and 609. This request also includes defendant's "rap" sheet and/or NCIC computer  
10 check on defendant.

11 (4) Seized evidence. All evidence seized as a result of any search, either warrantless or with a  
12 warrant, in this case. This is available under Fed. R. Crim. P. 16(a)(1)(C).

13 (5) Agent's reports, notes, memos. All arrest reports, investigator's notes memos from arresting  
14 officers, sworn statements, and prosecution reports pertaining to defendant. These reports are  
15 available under Fed. R. Crim. P. 16(a)(1)(B) and (C); and Fed. R. Crim. P. 26.2 and 12(I). This  
16 request includes affidavits in support of search warrants and the lists of items seized in the execution  
17 of any search warrant. In addition, any witness interview notes that could be considered to be  
18 statements attributable to the witness are requested. See Goldberg v. United States, 96 S.Ct. 1338  
19 (1976).

20 (6) Other documents/tangible objects. All other documents and tangible objects, including  
21 photographs, books, papers, documents, or copies or portions thereof which are material to defendant  
22 defense or intended for use in the government's case-in-chief or were obtained from or belong to  
23 defendant. Specifically requested also are all documents, items and other information seized pursuan  
24 to any search. This is available under Brady and Fed. R. Crim. P. 16(a)(1)(C).

25 (7) Bias of government witnesses. Any evidence that any prospective government witness is  
26 biased or prejudiced against defendant or has a motive to falsify or distort his/her testimony. See  
27 Pennsylvania v. Ritchie, 480 U.S. 39 (1987); United States v. Strifler, 851 F.2d 1197 (9<sup>th</sup> Cir. 1988).



government witness has engaged in any criminal act whether or not resulting in a conviction. See

F.R.E. Rule 608(b) and Brady.

(9) Investigation of witnesses. Any evidence that any prospective witness is under investigation by federal, state or local authorities for any criminal or official misconduct. United States v. Chitty, 760 F.2d 425 (2d Cir.), 474 U.S. 945 (1985).

(10) Evidence regarding ability to testify. Any evidence, including any medical or psychiatric reports or evaluations, tending to show that any prospective witness's ability to perceive, remember, communicate, or tell the truth is impaired; and any evidence that a witness has ever used narcotics or other controlled substance, or has ever been an alcoholic. United States v. Strifler, 851 F.2d 1179 (9<sup>th</sup> Cir.1988); Chavis v. North Carolina, 637 F. 2d 213, 224 (4<sup>th</sup> Cir. 1980); United States v. Butler, 567 F.2d 885 (9<sup>th</sup> Cir. 1978).

(11) Personnel files. It is requested that the government review each agent's personnel file for review for information requested in paragraphs (7) -(10) above and determine whether there is any impeaching information contained in the files. See United States v. Henthorn, 931 F.2d 29 (9<sup>th</sup> Cir. 1991).

(12) Government Witnesses. The name and last known address of each prospective government witness. See United States v. Neap, 834 F.2d 1311 (7<sup>th</sup> Cir. 1987); United States v. Tucker, 716 F.2d 583 (9<sup>th</sup> Cir. 1983) (failure to interview government witnesses by counsel is ineffective); United States v. Cook, 608 F.2d 1175, 1181 (9<sup>th</sup> Cir. 1979) (defense has equal right to talk to witnesses).

(13) Other witnesses. The name and last known address of every witness to the alleged offenses (or any of the overt acts committed in furtherance thereof) who will not be called as a government witness. United States v. Cadet, 727 F.2d 1469 (9<sup>th</sup> Cir. 1984).

(14) Favorable testimony. The name of any witness who made an arguably favorable statement concerning defendant or who could not identify him or who was unsure of his identity or participation in the crime charged. Jackson v. Wainwright, 390 F.2d 288 (5<sup>th</sup> Cir. 1968); Chavis v.

4 (15) Specific inquiries of agents. It is requested that the government make specific inquire of  
5 each government agent connected to the case for the information requested in Paragraph s 12-14.  
6 United States v. Jackson, 780 F.2d 1305 (6<sup>th</sup> Cir. 1986); United States v. Butler, 567 F.2d 885,889  
7 (9<sup>th</sup> Cir. 1978)

8 (16) Rule 26.2 Material/Timing of production It is requested that the government provide all  
9 material available pursuant to Fed. R. Crim. P. 26.2, sufficiently in advance of trial or motion  
10 hearings so as to avoid unnecessary delay prior to cross examination.

11 (17) Experts/resumes. The curriculum vitae of any and all experts the government intends to  
12 call at trial, including any and all books, treatises or other papers written by the expert which is  
13 relevant to the testimony.

14 (18) Expert's reports and summaries. Production of any and all reports of any examinations  
15 or tests, is requested pursuant to Rule 16(a)(1)(D). In additions, it is requested that the government  
16 disclose a written summary of testimony the government intends to use under FRE 702,703 or 705.  
17 As required by Rule 16(a)(1)(E), the summaries must describe the witnesses' opinions, the bases and  
18 the reasons therefore and the witnesses' qualifications. See Fed. R. Crim. P. 16(a)(1)(E) (added  
19 December 1, 1993).

20 (19) Confidential Informant(s) and related information. It is requested that the government  
21 reveal the identify of any and all confidential informants who were percipient witnesses to the  
22 charges in this case and information regarding any promises made to the CI and the information  
23 provided by the CI.

24 (20) Promises made or "deals" with government witnesses. Under Giglio v. United States,  
25 405 U.S. 150 (1972), the government must provide all promises of consideration given to witnesses.  
26 See also United States v. Shaffer, 789 F.2d 682 (9<sup>th</sup> Cir. 1986).  
27  
28

proceedings is requested in order to determine whether there has been compliance with Rule 6 with regard to attendance and the number of grand jurors voting on this indictment. See Rule 6(b)-(d).

(22) Grand Jury Transcripts. All grand jury transcripts are requested in accordance with Rule 6.

(23) Statement by Government of Refusal to Provide. If the government has any of the above-requested items or the items required by the rules, law, or court order, but refuses to provide them to the defense, Defendant requests a statement as to the existence of the items and the refusal to provide them.

Dated: 5/14/08

Respectfully submitted,

S/CHARLES H. ADAIR

CHARLES H. ADAIR,  
Attorney for Defendant



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Attorney for: Defendant

UNITED STATES DISTRICT COURT  
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UNITED STATES OF AMERICA.

Plaintiff.

VS.

EMMANUEL HERNANDEZ-GAYOSSO,

Defendant

CASE NO: 08CR0908-W

## CERTIFICATE OF SERVICE

IT IS HEREBY CERTIFIED that:

I, CHARLES H. ADAIR, a citizen of the United States over the age of 18 years and a resident of San Diego County, California, whose business address is 1140 Union Street, # 201, San Diego California, 92101; and is not a party to the above-entitled action and subsequent to electronically filing with the Clerk of the Court, I personally served a copy of :

NOTICE OF MOTION, MOTION FOR DISCOVERY & P's & A's IN SUPPORT OF  
MOTION FOR DISCOVERY

TO: W. MARK CONOVER, AUSA  
UNITED STATES ATTORNEY'S OFFICE  
880 FRONT STREET. ROOM 6293  
SAN DIEGO, CA 92101

BY: electronically filing



I declare under penalty of perjury that the foregoing is true and correct.

Executed on May 14<sup>th</sup>, 2008

S/CHARLES H. ADAIR

CHARLES H. ADAIR